

1 Honorable Marsha J. Pechman  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 LINNE ROSE, individually and on behalf of  
10 all others similarly situated,

11 Plaintiffs,

12 v.

13 BEHR PROCESS CORP., BEHR PAINT  
14 CORP., MASCO CORP., THE HOME  
15 DEPOT, INC., and HOME DEPOT U.S.A.,  
16 INC.,

17 Defendants.

18 NO. 2:17-cv-01754-MJP

19 **STATUS REPORT**

20 Pursuant to the Court's Order of May 30, 2018 (see Order (Dkt. #47) at 6), the  
21 Defendants Masco Corporation, Behr Process Corporation and Behr Paint Corp. ("Behr")  
22 respectfully submit the following status report:

- 23 1. As the Court may recall, this litigation is one of numerous cases filed around the country  
24 pertaining to the DeckOver resurfacing product that Plaintiff alleges is manufactured,  
25 marketed and/or sold by Defendants. See Compl. (Dkt. #1) at ¶¶ 1-4.  
26  
27 2. As previously reported, Behr advised in late 2017 that it had reached a settlement in  
28 principle with respect to the substantive relief in a nationwide class action settlement  
29 with plaintiffs in three actions before other district courts, contingent upon finalizing a

- 1       mutually agreeable, written settlement agreement and of course, preliminary and final  
2       approval. See Stipulated Motion And Order To Stay Case (Dkt. #46) at 2.
- 3       3. On May 3, 2018 a motion for preliminary approval of a class action settlement was filed  
4       in the case of Bishop et al. v. Behr et al., Case No. 1:17-cv-04464 (N.D. Ill.) that Behr  
5       believes would, if granted final approval, resolve all claims made in the above captioned  
6       action against all Defendants. See Mot. for Preliminary Approval (Bishop Dkt. #61) at  
7       passim; Bishop Settlement (Bishop Dkt. #61-1) at passim.
- 8       4. In light of the motion for preliminary approval filed in Bishop, on May 30, 2018 the  
9       Court stayed this action and ordered Behr to provide periodic reports on the process of  
10      preliminary approval, notice, and final approval. See Order (Dkt. #47) at 6. The Court  
11      ordered Behr to file the first report on July 13, 2018, and to file subsequent reports every  
12      60 days thereafter. See id. at 4.
- 13      5. On June 27, 2018, Judge Blakey granted the motion for preliminary approval in Bishop.  
14      See Min. Entry (Bishop Dkt. #87) at 1. Judge Blakey further ordered that class notice  
15      should commence, and that the notice program should include mailed notice,  
16      publication notice, and a notice website. See Preliminary Approval Order (Bishop Dkt.  
17      #88) at ¶ 8. Judge Blakey further set an opt-out and objection deadline of September  
18      20, 2018 (see id. at ¶¶ 13, 19)), and a Final Approval Hearing date of December 6, 2018  
19      (see Min. Entry (Bishop Dkt. #87) at 1).
- 20      6. In light of the preliminary approval of the Bishop settlement and the ongoing notice  
21      program associated therewith, Behr believes that the current stay of the case should be  
22      maintained through the Final Approval hearing set for December 6, 2018. See disc.  
23      supra at ¶ 5; see also Min. Entry (Bishop Dkt. #87) at 1. Behr will file the next status

1 report on September 11, 2018 and every 60 days thereafter consistent with the Court's  
2 Order of May 30, 2018, unless and until the Court orders differently. See Order (Dkt.  
3 #47).

4 7. Counsel for Behr has consulted with counsel for Home Depot and Plaintiff, who have  
5 not objected to this Status Report.

6 Presented this 13<sup>th</sup> day of July, 2018.

7 CARNEY BADLEY SPELLMAN, P.S.

8 *By s/ Emilia L. Sweeney*

9 Emilia L. Sweeney, WSBA No. 23371  
10 Email: [sweeney@carneylaw.com](mailto:sweeney@carneylaw.com)  
11 Jason M. Kettrick, WSBA No. 35459  
12 Email: [kettrick@carneylaw.com](mailto:kettrick@carneylaw.com)  
13 Elliot C. Copenhaver, WSBA No. 46909  
14 Email: [copenhaver@carneylaw.com](mailto:copenhaver@carneylaw.com)  
15 701 Fifth Avenue, Suite 3600  
16 Seattle, WA 98104-7010  
17 Telephone: (206) 622-8020  
18 Facsimile:(206)467-8215  
19 Attorneys for Defendants Behr Processing  
20 Corporation, Behr Paint Corp. and Masco  
21 Corporation

22 LATHAM & WATKINS LLP

23 *By s/ Kathleen P. Lally*

24 Kathleen P. Lally  
25 Mark S. Mester  
26 Email: [mark.mester@lw.com](mailto:mark.mester@lw.com)  
Kathleen P. Lally  
Email: [kathleen.lally@lw.com](mailto:kathleen.lally@lw.com)  
330 North Wabash Avenue, Suite 2800  
Chicago, Illinois 60611  
Telephone: (312) 876-7700  
Attorneys for Defendants Behr Processing  
Corporation, Behr Paint Corp. and Masco  
Corporation

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of July, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which caused all CM/ECF participants to be served by electronic means.

DATED this 13<sup>th</sup> day of July, 2018.

## CARNEY BADLEY SPELLMAN, P.S.

By: s/Andrea Williams

Andrea Williams, Legal Assistant